Supreme Court, U. S.
FILED
JUL 12 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1269

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1975
CERTIORARI GRANTED MAY 27, 1975

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Relevant Docket Entries.

CIVIL DOCKET

U.S.D.C., E.D.N.Y

THOMAS DWEN, as President of the Suffolk County Patrolman's Benevolent Association and THOMAS DWEN, individually,

against

JOHN L. BARRY, Commissioner of the Suffolk County Police Department.

DATE	FILINGS—PROCEEDINGS
8/ 4/71	Complaint filed. Summons Issued.
8/ 6/71	Summons returned & filed/executed as to service of S/C & Order to show cause.
8– 6–71	Order to show cause with proof of service filed, for injunction etc. (ret Aug 20, 1971).
8–20–71	Before MISHLER, CH. J.—Hearing on show cause for injunction Motion argued—Decision reserved.
11– 8–71	By MISHLER, CH. J.—MEMORANDUM OF DECISION and ORDER FILED. Motion for a preliminary injunction is denied. It is ORDERED the court believes the claim is insufficient as a matter of law. It is however reluctant to dismiss the complaint without affording pltff an opportunity to argue the point. The Court sets the matter down for argument on Nov 19 1971 at 10:00 A.M. • • •
11–18–71	Affidavit of Eugene R. Kelley filed.

Relevant Docket Entries.

DATE	FILINGS—PROCEEDINGS
12- 1-71	By MISHLER, CH. J.—MEMORANDUM of DECISION & ORDER FILED. FOR THE REASONS EXPRESSED IN the memorandum of decision dated 11-8-71 the complaint is dismissed. The Clerk is directed to enter judgment in favor of the deft and against the pltff dismissing the complaint, and it is So ORDERED.
12- 2-71	JUDGMENT FILED. It is ordered that judgment is entered in favor of deft and against the pltff dismissing the complaint. • • •
12-10-71	NOTICE OF APPEAL FILED. (copy of appeal mailed to C/A and to George W. Percy, Jr. County Atty, Suffolk Co., County Center, Riverhead, N.Y.
1- 7-72	ANSWER of deft file.
1-18-72	Record on appeal certified and mailed to Court of Appeals.
2/ 6/73	Certified copy of order of C of A dismissing appeal filed.
10-24-73	Certified copy of judgment and copy of opinion received from C of A reversing judgment of district court & remanding it for further proceedings, etc. filed.
12- 7-73	Before MISHLER, CH. J.—Case called & adj'd to 6-21-74.
4- 3-74	Before MISHLER, CH. J.—Case called. Trial ordered and begun (non-jury). Both sides rest. Decision reserved. Trial concluded.

Relevant Docket Entries.

DATE	FILINGS—PROCEEDINGS
5-31-74	By MISHLER, CH. J—Memorandum of decision and order dtd 5-30-74 granting judgment in favor of pltff and against deft filed. Settle judgment.
6-11-74	By MISHLER, CH. J—JUDGMENT dtd 6-11-74 granting permanent injunction against enforcing Section 2/2.16 of the Rules and Procedures of the Suffolk County Police Dept filed.
6-21-74	Notice of appeal filed. Duplicate mailed to C of A.
1/20/75	Certified copy of Judgment received from court of appeals and filed affirming judgment of the District Court with costs to be taxed against the appellant.

Relevant Docket Entries.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Case No. 72-1037

DATE	FILINGS—PROCEEDINGS
12-16-71	Filed copy of notice of appeal.
1-19-72	Filed record (original papers of district court).
6-14-73	Argument heard (by: Kaufman, Ch.J., Smith C.J. and Bryan, D.J.).
8-22-73	Judgment Reversed and Action Remanded, Smith, C.J.
8-22-73	Filed judgment.
10-19-73	Issued Mandate (opinion & judgment).

Case No. 74-1900

DATE	FILINGS—PROCEEDINGS
6-24-74	Filed copies of docket entries and notice of appeal.
1- 9-75	Argument heard (By: Smith, Oakes, Timbers, CJJ).
1 -9-75	Affirmed in open court.
1- 9-75	Filed judgment.
1-16-75	Issued mandate (judgment).
4-14-75	Filed notice of filing of petition for writ of certiorari (S.C.#74-1269).
6- 2-75	Filed certified copy of order of Supreme Court granting petition for writ of certiorari.

Notice of Appeal.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Filed June 18, 1974

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff,

against

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

Case No. 71 C 1020

NOTICE is hereby given that JOHN L. BARRY, Commissioner of the Suffolk County Police Department, defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of the HON. JACOB B. MISHLER dated June 11, 1974 adjudging that Section 2/2.16 of the Rules and Procedures of the Suffolk County Police Department is unconstitutional and void and that the Suffolk County Police Commissioner, his agents, servants, employees and all persons acting in active concert with him are hereby permanently enjoined from enforcing Section 2/2.16 of the Rules and Procedures of the Suffolk County Police Department.

Dated: Northport, New York
June 18, 1974

S/ Patrick A. Sweeney
PATRICK A. SWEENEY
Of Counsel to GEORGE W. PERCY, JR.
Attorney for Defendant
691 Fort Salonga Road
Northport, New York 11768
(516) 757-6515

Minutes of Hearing before Hon. Jacob B. Mishler, U.S.D.J. on April 3, 1974.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

United States Courthouse
Brooklyn, New York

April 3, 1974
10:15 o'clock a.m.

Before: HONORABLE JACOB B. MISHLER, U.S.D.J.

APPEARANCES:

MEYER & WEXLER, Esqs., Attorneys for Plaintiff, 28 Manor Road, Smithtown, New York

By: LEONARD WEXLER, Esq.

PATRICK A. SWEENEY, Esq., Attorney for Defendant, 691 Fort Salonga Road, Northport, New York 11768

The Clerk: Civil cause for trial, Dwen against Barry.
Mr. Wexler: Both sides ready.
Mr. Sweeney: Both sides ready.
The Court: Who appears for the plaintiff?
Mr. Wexler: I do, your Honor, Leonard Wexler.
The Court: You are Mr. Sweeney?
Mr. Sweeney: Yes, your Honor.

Minutes of Hearing.

The Court: Would you like to make a brief statement outlining the position of the plaintiff here?

Mr. Wexler: Yes, your Honor. The plaintiff brought its action in 1971, concerning the hair regulation of the then commissioner dated July, 1971, placing certain regulations on hair. The regulations are part of the pleadings, basically say the hair shall be neat and trim, may not touch the collar, the sideburns, may not extend past the exterior opening. Mustaches must be trim, shall not extend over the top of the upper lip or beyond the corners of the mouth; that there are no beards or goatees and hair wigs will not be worn on duty.

Basically, it's our contention it's a violation of their constitutional right. The rules and regulations are unreasonable and under the Court of Appeals' decision, the burden is upon the police commissioner to prove the necescesity of the said rules.

The Court: Would you like to proceed then?

Mr. Sweeney: Yes, your Honor.

The Court: Do you have any statement to make?

Mr. Sweeney: I'll make a brief statement, your Honor.

The sum and substance of the plaintiff's complaint has been that the hair regulation existing in the Suffolk County Police Department was unreasonable in that it doesn't conform to community standards. I intend to show at this time that there has been a modification of that hair regulation which is part of the pleadings making it probably more in line with community standards and is somewhat a different regulation than is before your Honor.

The Court: Is that the test, community standards?

Mr. Sweeney: That is what the plaintiff contends. That is not my contention at this time. My contention is that the police commissioner, part of the general powers and maintaining discipline and in having a uniform regulation among police officers has the power to, just as he has the

power to regulate the fact that policemen may have to wear uniform, wear a badge, the collar, soxs that a policeman has to wear, so too, he can regulate hair lengths. There's a two-prong issue, I suppose. Number one, can the police commissioner regulate hair at all? Number two, if he can, is this particular regulation arbitrary?

The Court: The regulation that I originally passed upon has been modified. Does that moot the whole question or do you want to amend the pleadings somehow?

Mr. Sweeney: That's up to the plaintiff at this time. I was here on the basis of the Circuit Court of Appeals saying that the commissioner had the burden of showing a public need for the regulation. I think I can do so, but, perhaps, I ask counsel if he would stipulate to the new regulation in effect?

The Court: Suppose you mark the new regulation and I'll assume the pleadings are amended to place in issue the question as to whether there is a public need for the regulation and I assume the need is related to the need for discipline.

I don't know whether we're talking about a rational basis or a compelling state interest. I don't know whether that's the same thing as public need. I'm refreshing my recollection in reading the opinion again for the first time since August, 1973.

They talk about a rational continuum, which broadly speaking includes a freedom from all substantial arbitrary impositions and purposeless restraints. In other words, you must show that there is a reason and I say I don't know whether that means a rational basis or compelling state interest as the phrases generally used for many tests to determine the constitutionality of restraints.

Mr. Sweeney: Your Honor, just commenting on the Circuit Court's opinion, while they do say a lot of language, they make one statement at the end of the opinion saying, "We imply no view on the merits." By implication they certainly have said something on the merits, but I indicate to the Court at this time that if we can show that there is a purpose for the regulation, that it's not arbitrary, then—I believe the Circuit Court sent it back because it was poorly decided on afterwards rather than some kind of testimony.

The Court: That's the implication, but I want to know first what the regulation is and what you conceive your burden is. It says here "To establish a genuine public need for the regulation." I assume that the "genuine public need" relates to the need for discipline. I can think of no other public need in the frame work of the issue of this case.

Do you agree, Mr. Wexler? Isn't it all related to discipline?

Mr. Wexler: I don't know. It could be other interests involved. I tried the Long Island Railroad case of hair and there the Long Island Railroad tried to use a safety and health as a state interest. Of course, they failed in that. I don't know what they intend to use as the basis for the interest, whether it's discipline, health, safety, I don't know.

The Court: How long do you think it will take to try this case?

Mr. Sweeney: I have one interest. [Witness]

The Court: That sounds interesting. I just happen to have today. I'm sandwiched in between two jury trials. I'm picking a jury tomorrow. Let's try to finish this today.

Mr. Wexler: We have a problem with respect to the new regulation that was promulgated on November 26, 1973. I don't know whether it's a new regulation in view of the last paragraph. That's the reason I didn't consent to it as a regulation.

The Court: Do you agree that if the old regulation is no longer in effect, that this case, for all purposes mooted.

Minutes of Hearing.

We have no case. I'm not going to determine whether there's a public need for the old regulation if it's not in effect. It's just a fruitless exercise. I've got better use for my time.

Mr. Wexler: Yes, your Honor.

The Court: I must assume what we're talking about is the regulation that is presently in effect.

Mr. Sweeney: The regulation in effect, the deputy commissioner will testify that this is the regulation to modify the other.

The Court: I want Mr. Wexler to say, "We are challenging the regulation in effect." And the pleadings are so amended.

Mr. Wexler: Yes, your Honor.

The Court: So that we have no regulation, no objection about it. Let's mark the new regulation in evidence.

The Clerk: Defendant's Exhibit A for identification received in evidence.

(So marked.)

The Court: Do you want time to go over it?

Mr. Wexler: This is the first time I've seen it.

The Court: I assume you have a thousand copies and you can loan one to Mr. Wexler. We have Xerox copies, marked Defendant's Exhibit A. I have one copy. I return the original copy to the defendant and I have two copies for the plaintiff.

Now, we're all set to go. Please call your first witness.

Mr. Sweeney: I would like to call Deputy Commissioner Robert Rapp.

Robert C. Rapp, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

The Clerk: Full name for the record, please?

Minutes of Hearing.
Robert C. Rapp—Direct.

The Witness: Robert C. Rapp.

Direct Examination by Mr. Sweeney:

Q. Commissioner, by whom are you employed? A. Suffolk County Police Department.

Q. What capacity are you so employed? A. Deputy commissioner.

Q. How long have you been deputy commissioner of the Suffolk County Police? A. Appointed to that position, July 2nd, 1973. Approximately nine months ago.

Q. What was your occupation prior to being employed as deputy commissioner? A. I was an assistant district attorney in and for the County of Suffolk for a period of six years.

Q. Prior to that appointment, what was your employment? A. Nine years I was employed by the New York [City] Safety Police Department.

Q. In what capacity? A. Patrolman and sergeant.

Q. In your duties as deputy commissioner, are you familiar with the rules and regulations of the Suffolk County Police Department? A. Yes, I am.

Q. If I show you a copy of them, can you identify them for me?

(Handing to witness.)

Mr. Wexler: I'll concede them, your Honor.

The Court: Let them be marked.

The Clerk: Defendant's Exhibit B for identification received in evidence.

(So marked.)

The Court: Are these originals?

Mr. Sweeney: Certified copy.

The Court: There'll be deemed marked if you prefer.

Mr. Sweeney: This is my copy. They have many originals.

The Court: The specific pages referred to will be marked with a number B1, B2 and so forth.

Q. Commissioner, I refer you to page 16. Could you tell me if that's the grooming regulation that was in effect prior to November of 1973? A. Yes, it was. Section 2.16, Sub-Divisions A-3-E, the grooming regulation.

Q. Does that in sum and substance involve the regulation of the length of hair of patrolmen? A. Yes, it is.

Mr. Sweeney: Did you wish to mark the page, your Honor?

The Court: Mark the page referred to.

The Clerk: Page 16 so marked.

(So marked.)

Q. Mr. Rapp, I show you Defendant's Exhibit A (handing to witness). Is that a modification of the grooming standard as exists in this book? A. Yes, it is, sir.

Q. Would you previously describe to the Court what the modification is? A. Section S. Chapter 2, Paragraph 2.16, Rules and Procedures of the Suffolk County Police Department, Sub-Divisions A, B and C were amended. Sub-Section A was amended to permit hair to extend down and touch the collar at the back of the neck. This amendment was made in an effort to recognize the fact that men's hair styles have changed in the past few years. Sub-Section A also prohibits ponytails and it also prohibits length of hair that will interfere with the proper wearing of helmets or authorized uniform head gear.

The Court: In amending the regulations, was an opportunity offered to the members of the police

department or other sections of the public to challenge the regulations or offer proof that they weren't needed or required or that they were not consistent or in line with the local community styles?

The Witness: These regulations, the amendments thereto, Sub-Sections A, B and C were arrived at after a series of meetings between myself and President Johnson, Edward Johnson of the Suffolk County PBA. He and I discussed the matter at some length and basically, the amendments that the Court has in Defendant's Exhibit A is a result of an agreement entered into between he and I which presumably would meet with the approval of the membership as well as give the Suffolk County Police Department some means to control the appearance of Suffolk County police officers.

The Court: Who is Thomas Dwen, the president?

The Witness: The original plaintiff was the president of the PBA at the time the suit was instituted. He was in the reelection. Patrolman Johnson was. I dealt with him as the present president of the Suffolk County PBA.

The Court: So there wasn't any public hearing or hearing that gave anyone else the opportunity; this was arrived at in confidence as between you and the present president?

The Witness: Largely as a result of the decision of the Second Circuit which sent it back for this hearing or evidentiary hearing, was the feeling of Commissioner Kelly we should sit down with the PBA and see what exactly they wanted or what were looking for in connection with this suit. As I say, Paragraphs A, B and C are the result of those conferences I had with Mr. Johnson.

Q. Mr. Rapp, I show you a drawing (handing to witness). Would you—

The Court: Do you represent the PBA at this point in the proceeding?

Mr. Wexler: Yes, your Honor. I was waiting for cross-examination before I would say anything.

The Court: Proceed.

Q. Is that particular drawing a regulation of the Suffolk County Police Department? A. This particular drawing was made at my request and it's an attempt to depict what is said in words in the regulations. It's an attempt to depict it in a picture so that it's more understandable to both the patrolman and the supervisors who have to enforce the regulation.

Q. That picture was circulated to the members of the Suffolk County Police Department and they wore their hair as that picture is depicted, they would not be in violation of the regulation? A. That's correct, sir.

Mr. Sweeney: I would like to offer that picture into evidence at this time.

Mr. Wexler: No objection.

The Clerk: Defendant's Exhibit C for identification received in evidence.

(So marked.)

Q. As to the grooming standard or hair regulation as it exists today, could you state for the Court what are the general reasons why the Suffolk County Police Department has such regulations? A. One reason for the present regulations and, again, recognizing the changing of men's hair styles lately and the fact that most of our men in the department, the vast majority are under the age of thirty,

the compelling reason for hair regulations at all is one of safety. We have approximately 2,600 police officers in Suffolk County. 80% of our patrol force drive one-man units. We have a series of regulations concerning safety, specifications for police cars, specifications are arrived at to give the police officer the safest vehicle to drive in. We test weapons to make sure the police officers are equipped with a weapon that will not fail in time of need. We equip them with mace, a chemical device to cause discomfort—

Mr. Wexler: I don't want to interrupt, but I don't see the firing of guns and the carrying of mace as germane to the issue.

The Court: I'll allow it only because it might tend to show the care with which the department exercises in safety and other areas and it may relate to some safety requirement in hairdress. I can see it coming, but I want to see if it does.

Mr. Wexler: Your Honor, I see why I said at the beginning I didn't know what route they would take. I said possible safety and that's what they're using.

The Court: At this point I can't see it, but I'll allow it.

Mr. Rapp, I had missed to this point the connection, but it may be developed so I'll listen to that.

The Witness: I'll make the connection now if I may.

A. In the opinion of the Suffolk County Police Department, long hair possesses a safety problem to an officer attempting to make an arrest. When I was a rookie police officer in the Safety of New York, we were taught how to take a man off his feet by pulling on his hair and if I may demonstrate to the Court with my hands, you grab a man

by the hair of the back of his head and rib straight down, you can take that man off his feet in a matter of seconds. His body has got to follow his hair.

The Court: Would you like to demonstrate on our reporter who won't pass the test? Would you mind, Mr. Silverman?

(Demonstration in Court.)

The Court: Repeat for the record what you just did to the reporter.

The Witness: I placed my hand at the rear of the reporter's head and I grasped all the hair I could in my fingers. I held my forearm touching the spine of the reporter and demonstrated to the Court that a straight down pull—

The Court: That's why you got the leverage, touching the spine?

The Witness: Right.

The Court: You grabbed the main—you don't mind, Mr. Silverman—and pulled down forcefully. You say that would knock the individual over?

The Witness: That's right, his body would have to follow the pull of hair, whichever direction you took.

Mr. Wexler: For the record, your Honor, may I point out in grabbing the hair, he grabbed that portion of the hair which was above the collar in his demonstration.

The Court: I think so. Don't be so satisfied in making your point. I imagine even that hair has to stop some place and the lower it is the easier it is to grasp. I imagine even a crew cut would make it almost impossible.

Mr. Wexler: A baldy would be almost better.

The Court: That would be one of my questions, whether this witness would suggest we shave every policeman's head in Yul Brynner fashion.

The Witness: I don't for a minute suggest that. I merely say that an effort to provide for the safety of our officers, we have to have the right to control the length of hair.

The Court: That's the one place where safety is a factor. You say that it eliminates the danger of an offender or individual grabbing the hair and rendering the officer defenseless?

The Witness: That's correct, sir.

The Court: That would refer only to the length of the hair in the back, have nothing to do with sideburns, beards, mustaches; my correct, there, nothing that could happen?

Mr. Sweeney: I would like to indicate to the Court in effect there is no regulation as to mustaches at this time.

The Court: How about beards?

Mr. Sweeney: There is a regulation as to beards, not mustaches.

The Court: But that safety precaution would not refer to beards, would it?

The Witness: I would say it would.

The Court: It would?

The Witness: Yes, by the same token if you can grab a man by the back of the head by his hair, if he had a beard, you can grab him by the beard and make him go almost any way you want to go merely by hanging on with sufficient strength.

Q. Commissioner, you were stating to the Court the general reasons for the regulation. Is safety the only reason? A. No, an additional reason is the appearance, the general

appearance of a police officer. A police officer is a public servant. He wears a uniform that has come to be recognized as a police officer's uniform.

Q. In line with that uniform, I would just like to show you page 35 of Defendant's Exhibit B. I ask you if that relates to uniform regulations as to uniforms?

(Handing to witness.)

A. Yes, sir, it does.

Q. Would you go on as far as neatness or appearance is concerned? A. Unlike some other police departments, Suffolk County does not require a police officer to purchase his own uniforms. Any police officer assigned to our police department is given his uniforms. When they wear out he's given new uniforms. We do this in an effort to maintain an appearance throughout the department of neatness. It makes for high morale when you look good, you feel good. When you feel good, you do a good job.

Q. Do you regulate the color of the uniform? A. Yes, we do.

Q. Do you regulate the color shoes? A. Yes, we do.

Q. How about soxs, what kind of soxes? A. We regulate the color of soxs. They have to be black.

Q. Do you regulate—

The Court: White shirt?

The Witness: No, sir, blue shirt up to the rank of—lieutenants wear white shirts with a blue uniform. Sergeant and patrolman wear blue shirts with a blue uniform.

The Court: Is the blue a particular tint or lightness?

The Witness: Standard issue blue similar to the two officers who are present in Court, your Honor.

The Court: Thank you.

Q. Do you also regulate hats? A. Yes.

Q. Is the hat a part of the uniform? A. Yes.

Q. Is a patrolman required to wear a hat while on duty? A. Yes, he is.

Q. What type of hat is that? A. The standard eight point police hat.

Q. Is the patrolman required to wear that hat at all times or are there occasions when he does not have to wear it? A. The department does not require an officer to wear his hat while in the car, his radio unit. When he exits the vehicle, he has to put it on.

The Court: Has any survey been made in the community or maybe outside the community as to public reaction or acceptance of deviations from uniform policy? In other words, are police departments which permit individualism in communities held up to ridicule in any way? Does the public lose respect for the force in any way?

The Witness: I don't know of any formal survey that would indicate that one way or the other. I have heard remarks from various sources as to members of the public commenting on hair. I have heard it from members of our own department, patrolmen themselves.

Q. In your opinion, Commissioner Rapp, would there be an indication where the length of hair of a patrolman could interfere with his duties? A. Aside from the obvious problem while trying to effect an arrest, I can conceive of hair length that would interfere with his operating of a police vehicle during a pursuit chase. If his hat is not on and he's driving at a sufficient speed and his hair is long enough, I can see it blowing in his eyes.

Minutes of Hearing.
Robert C. Rapp—Direct.

Q. Does the Suffolk County Police Department have various public relations programs as to the functions of the police department in general? A. Yes, we do. We have a Community Relations Bureau.

Q. Do you send patrolmen or uniformed officers around to various civic groups or high schools representing the police department? A. Yes, we do. We have a Regulation Speakers Bureau that handles most of those assignments.

Q. What's the purpose of that type of public relations? A. Basically, it's to get the closer rapport between the community and the police department. We find that when a community understands what we're trying to do and the resources that we have available to do it, that they understand our problems and we on the other hand have the opportunity to hear their problems and it makes for a better relationship.

Q. Is it essential for the functioning of the Suffolk County Police Department that the community in general have respect for the police department? A. I would say definitely, sir.

Q. What would you say is the role of the uniform patrolman as an example of the Suffolk County Police Department? A. The uniform patrolman is the first line. He has the first contact generally with any member of the public, whether it's a traffic stop or a routine check or responding to a call for assistance. The patrolman on the street or in the car is the first one observed, generally by any member of the public.

The Court: How many members do you have in the Suffolk County Police Department?

The Witness: We have 2,600 sworn officers. It's approximately the fourth largest in the State of New York.

Minutes of Hearing.
Robert C. Rapp—Direct.

Q. Is the reason for this regulation as to this blue uniform, the badge, perhaps even the revolver so that the public can identify who is a patrolman and who is not? A. Not only the public, but would-be perpetrators of criminal acts. The purpose of the uniform is to let them know the uniform is there. It's a prevention method of preventing crime.

Q. Would you say that the regulation as it now exists is part and parcel to your regulation of the color of their socks as being part of their uniform? A. Yes, sir.

Q. Does this particular regulation relate only to male personnel of the Suffolk County Police Department? A. That's correct, sir.

Q. How many female personnel are in Suffolk County Police Department? A. Presently employ 13 females.

Q. This regulation has no effect as to females? A. No, it does not, sir.

Q. Did you anticipate at some time that if in fact—withdrawn.

Are any of these females assigned to active patrol duty in a car as other patrolmen would be? A. No, sir.

Q. Do you anticipate at sometimes, perhaps you might each have to regulate the length of a female's hair if she was in this same category as on patrol duty?

The Court: Counselor is not objecting. It has nothing to do with the case. I have enough problems.

Mr. Wexler: I wasn't asking objection because I was asking that.

Mr. Sweeney: I was anticipating Mr. Wexler asking that.

The Court: You say it's discriminatory if you don't have females.

Mr. Wexler: One of the factors is safety. It only

applies to men and Suffolk County does intend to have females in the automobiles.

The Court: It's already been testified to they have different duties. They don't encounter muggers and—

Mr. Wexler: There is a pilot plan in effect to place women in the cars and, therefore, it becomes an issue what do they intend to do.

The Court: What they intend to do, I don't think that's important.

Mr. Sweeney: I brought it out only for the reason I anticipated Mr. Wexler making that argument. This regulation concerns specifically male personnel.

The Court: I agree. If you have women doing same same type of work, subject to the same hazards, that were described by Mr. Rapp, I would be inclined to agree that that would be power material encountering the position of the police department in which it says it's a safety measure, but it isn't, as far as I know, it isn't part of the female police department's work, the female branch of the police department.

Mr. Sweeney: I have no further questions at this time, your Honor.

Cross Examination by Mr. Wexler:

Q. Commissioner Rapp, didn't you have policewomen riding in patrol cars? A. Yes.

Q. Commissioner, were they riding when this new hair regulation was in effect? A. Yes, they were.

Q. Did the hair regulation apply to females riding in patrol cars? A. No, not at that time. No, sir.

Q. Not at that time, does it apply to them now? A. No.

Q. Do you have females walking patrol? A. On a temporary experimental basis.

Q. Does the hair regulation apply to them? A. No.

Q. Are they subject to great hazards or endanger because they have longer hair than the hair regulations? A. I would say they are.

Q. Do you plan to protect the females by having them follow the same rules and regulations as the men? A. I wouldn't say the same rules, but I do think we will promulgate rules, yes.

Q. So you do anticipate having rules affecting females who will be in patrol cars and roaming the streets? A. Yes, sir.

The Court: How extensive or how long has the experiment been going on?

The Witness: We put each of the 13—12 of the 13 policewomen were put in police units for two weeks.

The Court: Has that period expired?

The Witness: Yes, it has. We ran that sometime during the Summer.

The Court: There are no policewomen that are on duty in patrol cars at the present time?

The Witness: That's correct.

The Court: You're saying that the experiment had occurred before you promulgated the amended rule?

The Witness: Yes, I believe it did.

The Court: You said it was the Summertime. This happened in November.

The Witness: That's correct, sir.

Q. Do you have patrol women walking patrol? A. Not at the present time, no, sir.

Q. Were they walking patrol when the new hair regulations went into effect? A. I don't believe so, sir.

Q. How many uniform men are there in the Suffolk County Police Department? A. Approximately 2,600, sir.
Q. Uniform? A. Uniform?
Q. Approximately? A. Patrolmen?
Q. No, uniform men.

The Court: I imagine even that excludes the undercover.

A. 2,000, 2,100.
Q. Of the 500 detectives, how many of them are undercover or narcotics which wear, are permitted and I understand have different regulations because of the nature of the job? I'm interested in those, the rule would affect as detectives who do not wear uniforms.

The Court: Let's understand whether the rule is applicable to other than uniform men, the 2,000, 2,100?

A. Yes, sir, the rule is applicable, however, a detective can request in writing to be exempt from the hair regulations. That request, however, must show a justification of the assignment and why he feels departure from the regulation will assist him in performing that assignment.
A Mr. Wexler mentioned there are narcotics detectives, but there are others who are given an exemption based on the type of work they're doing.

The Court: Any given exemption for personal reasons?
The Witnes: (No response.)
The Court: A detective might be a member of an amateur rock and roll band and feel that he would like his hairdo to be atypical.

The Witness: I don't know of any exemptions based on that. Nor do I know of any requests based on a personal.
The Court: The ones that want to look like father and son.
The Witness: We haven't had requests for those reasons.

Q. Commissioner, so I understand, the new regulation dated the 26th of November, '73, does that supersede the old regulation? A. If you take that regulation of November and replace paragraphs A, B and C, and continue reading the rest of the regulation, that in total is the grooming standards of the department. I understand it's Sub-Section D, E and F, they're still in effect.
Q. So we have some clarification. The reason I'm confused, the 2 regulation, 2-2.16 A, B and C. Under the old regulation, it's 2-75.1, .2, .3, .4, .5. I'm confused. A. When the November, '73 order came out it amended those pages in Defendant's Exhibit B. I had no reference to this at the time I made the amendments.
Q. Could you tell us, based upon the old or the new, what's the hair regulation as of today? A. The present regulations are from Defendant's Exhibit B, the November order amends this section (Indicating). Section A, B, C, D is still in effect and E is still in effect. I had no reference to this at all. I didn't consut with this. I went to the rules and amended Sections A, B and C.
Q. Commissioner, getting back to my question, how many detectives are affected by this rule and regulation who are not exempt for one reason or another? By "detectives" we mean, those who wear ordinary clothes not provided by the county. A. Perhaps 250.
Q. Do those regulations affect the 250 who are not in uniform, but in street clothes? A. Yes, sir.

Q. Regulation, the new regulation, Paragraph A, second sentence, "Hair will not go below the ears or the collar." Does that mean hair can go over the ear or behind the ear? What does that mean? A. By that, I meant and I believe President Johnson meant that hair—

Q. I'm interested in what you meant? A. I meant that hair would go behind the ear and not over the ear.

Q. If hair came out from a wind or so forth over the ear, is that in violation? A. Not if caused by wind, sir, no.

Q. Assuming it was caused by wind, but the patrolman never pushed it back, is he in violation? A. Technically, I suppose he would be.

Q. So the violation becomes now how long it takes him to get his hair back if it accidentally comes back?

Mr. Sweeney: Objection.
The Court: Overruled. I'll allow it.

A. No, sir.

Q. Do you feel that the hair going over the ear is a safety hazard? A. The question is one of agree. How far over the ear, below the ear? Does it go to the collar? Does it touch your shoulder? Hair over the ear can stop here (indicating). The middle of the ear, the bottom? Can it stop at the collar, the shoulder? The problem is one of definition.

The Court: Two patrolmen stand up.

Q. I show you two patrolmen whom you know. You see their hair over their ears. Do you feel that's a safety hazard to the two patrolmen whom you know? A. As they presently have it?

Q. Yes. A. Might I suggest they be given some description in the record what's the hair I'm looking at before I answer the question, sir.

The Court: Surely.

Q. We'll start with Officer Nordt.

The Witness: May I do the description?
The Court: Surely.
The Witness: I know Officer Nordt's hair extends over his ear, but I can see his ear lobe. Patrolman Brady, I know hair is on top of the ear and extending not less than halfway down the ear. With that view in mind, I would say no, Mr. Wexler, that's not a safety problem.

Q. So hair touching or going over the ear as described by yourself and the two patrolmen is not a safety hazard? A. That's correct.

The Court: Is it a violation of the present regulation?
The Witness: Yes, it is, sir. Might I explain how we arrived at that particular regulation? Would the Court be interested?
The Court: Just answer the questions.

Q. If sideburns went one inch below the bottom of the ear, would that be a safety hazard? A. No.

Q. If someone had sideburns one inch below the bottom of the ear, would he be in violation of your rules and regulations? A. Yes, he would.

Q. You told us that most of the men in the Suffolk County Police Department are under thirty; is that correct? A. Yes, sir.

Q. In the community, sideburns going one inch below the ear, to the general public, is that acceptable, does it seem to you? A. Yes.

The Court: Well, this witness is giving wide discretion in expressing opinions. I don't know what it's based on.

Mr. Wexler: I didn't know either when he did.

The Court: I say most surveys—I don't know how many people the commissioner has talked to. I don't know how long he's living in the community, what community he's talking about. Certainly, public rejection on hair styles by a vast majority of the people could bring the department disrepute. If policemen, for example, were allowed to go unshaven for three or four days and walked around in a rumpled uniform, open collars, appear to be in total disarray, you can imagine that the public would soon lose respect for it.

Now, how far do you go? When does the public react? When policemen in New York first took their jackets off and were allowed to walk the streets in the Summer heat in their shirts, I don't quite remember if it was a half sleeve shirt—there was a reaction by the public and it may have taken days or weeks before they accepted it. Now, once they accepted it it was all right, but it had to be uniform, it had to be neat. That's the trouble with your questions, as to whether the hair below the ear—now the two policemen that stood up are neat. They appear to be well groomed. I can't see why the public won't accept hair styles of this kind. It is not a safety hazard, but then the regulations have to draw a line and no matter where you draw it, you can take it

because you can show by example that there's no reasonable basis for the borderline case. It's like deciding a close case in Court. No matter where you draw the line you can find a case that's so close that would result in a hardship or even an injustice. That's the problem with these things, regulations. Every time you draw a line, there's someone who can show that there's no basis for it.

I think the test is whether in the main, not that there might not be an exception, not that there might be an individual hardship, but for the entire police department, for the public as a whole, is there a need? You know when we talk about sideburns, we talk about how bushy they are. We talk about beards, of course beards in and of themselves are unacceptable. No one complained about Charles Evans Hughes when he was chief justice. Would they if he were a policeman? Maybe not. Would it be a safety hazard? I'm not sure. So when you're talking about personal grooming you and I know that someone can comply with these rulings and look very sloppy, unacceptable. Does that mean the one who complied will not bring dishonor to the department while one that does not will? No, I don't think so. You take individual cases. I think it's difficult to make an argument one way or the other on individual cases. That's why I'm asking these gentlemen to stand up. It goes to prove these gentlemen, even in violation of these regulations, are well groomed. I don't think they present a danger to themselves, but I don't know where the argument leads.

Mr. Wexler: I think—and though I'm not a believer in long hair and I'll state that on the record. I don't believe in ponytails, but I think it logically

leaves to leave it alone and it will seek its own level.

The Court: My personal attitude? We had a Court Reporter that had a ponytail. One judge literally threw him out of the Courtroom. He came to me and asked whether I had objection. I said not at all. I had law clerks and I interviewed a law clerk and I asked my then law clerk if he should shave the beard before he came for an interview. I said not at all. I've had law clerks with beards. Well, this is the first one—of course, I have a female law clerk. I had personnel ask whether there was any objection to coming to Court, females coming to Court in slacks. No. I want people to dress and act as they want to as long as it doesn't impinge on anyone else's freedom and it doesn't in any way impair the effectivenes of the force. That's the real question. That's why it's interesting to have surveys to see public reaction. It may very well show people don't mind. Some people react violently. Some don't care. For myself, as I recall it, I thought of the—I don't know whether I said it in my opinion because I haven't read it since I originally wrote it —uniform to me means uniform. Now, absolutely uniform? Nothing is ever an absolute performance and acceptance. So that the public sees a man in uniform and recognizes him as a physical representative of government, one that they can respect and look up to, I think that's important. It may sound old-fashioned. I think the policeman serves a very important purpose in our society, maybe more so now than ever.

Mr. Wexler: Don't we want him to be a part of society?

The Court: That's right, that too.

Mr. Wexler: I agree he should be neat, have a uniform, be clean. Is he supposed to be the military type hair or can he be with society?

The Court: Now we come to the very close questions. Where does it interfere with his personal right? Where does it affect the public and where does it affect his effectiveness? Now we come to these borderline cases. That's what I'm talking about. I won't have an easy time of it.

Mr. Wexler: That's the reason I pointed out, most of the men are under thirty.

The Court: Frankly, I felt it was that policemen were more subject to these uniform regulations than the military, for this reason that they had a choice before they entered the force of becoming a uniform law enforcement officer or not. The fellow drafting into the army, he has no choice. He's told. You say to a policeman, "Look. These are the regulations, do this, do that." If you want to accept the appointment, you comply. The Court of Appeals in its infinite wisdom disagrees. They say no, they're not a "[Para] parallel military force." They have jobs as civil service employees. I must accept that until the Supreme Court says, "No, they are in a sense a [Para-military] parallel organization."

You can continue with your examination.

Mr. Wexler: I will be very brief.

The Court: I don't want to cut you off. I may bring something up that might be helpful.

Mr. Wexler: I think we're wasting words. I think the Court knows the issue.

The Court: Do you know of any surveys?

Mr. Wexler: None.

The Court: That show public reaction?

Mr. Wexler: None.

The Court: Sampling?

Mr. Wexler: None. I don't think there are any.

The Court: Then it must be wasted on my impressions which aren't right either. How would I react? I don't know at this point how I would react. Again, it's almost what the extent is. The sideburns, are they so bushy even though they're not long, that they're seeming to be unruly and difficult to manage? When he walks down the street, is some citizen of advanced age or some youngster that passes by say, "My God, thy're getting to look like the out crowd or the in crowd." Or will they just say—or not even recognize the difference?

How many of the people out there, how many in number have hair beyond, lower than their ears and bushier and hair below the neck? So that it doesn't even make a difference. I assume that if you had policemen that had rings through their nose, you would say, "Well, that department can legislate on," but if everybody out on the Island started wearing rings in their nose, "That's all right. There's nothing wrong with that." Trying to regulate anyone's personal conduct is difficult, at best. No question about it. We've learned that in the obscenity laws. We've got a tiger by the tail in my humble opinion. I enforce it. I see it enforced because I try to interpret the law. My own personal view would be entirely different. As long as young children are protected, as long as people are not offended. If all it means that those who pay their fee, see what they want to see, personally, that's all right with me. Again, it's an area in which the legislator and the Court have tried to limit someone's personal freedom. It's

difficult. Here, it's in a different respect, but we have the same problem.

I can see an effort by police department and at least some of the officers to try to work out a regulation, but you're never going to get one that pleases everybody. There's going to be one fellow who likes a ponytail. You don't like. Why shouldn't he have it?

Mr. Wexler: I agree. This is right.

The Court: But if the community out there holds the man up to ridicule and if it reflects upon the department and the effectiveness of people, people won't respect him and I'm not talking about 100% of the people substantial majority, it may very well be a proper area for regulation.

Mr. Wexler: There isn't sufficient—

The Court: Why should an officer have to have a uniform? Suppose one of the officers sitting before me decided that he would like red striped pants?

Mr. Wexler: There they can make out an easy good case.

The Court: Why? To identify the policeman?

Mr. Wexler: Yes.

The Court: You know that's an excuse. You can identify the policemen. If enough didn't wear uniform pants but enough wore a uniform jacket, they'd be identifiable. Look how easily people are identified on a basketball court in quick movement. Nobody has to have the complete uniform—skin is showing—you see white and the red of the other. You know that. Identifiable? That still doesn't matter. You know in the movies when you see the marshals out west, they don't have uniforms. They just have a shield, six point shield and he doesn't have to say, "I'm Marshal Dillon" before he an-

nounces who he is. You've seen that shield. He's identified, right? Well, it might very well be a safety measur because if you require reaction, it may very well be the more identifiable uniformity you have the better you identify it. At dawn or thick of the night, it may be that a full uniform is better. I say it's really a matter of agree [degree]. How far do you go? When do you trespass on someone's personal freedom and when is it, as the Court of Appeals said, a regulation that's a public interest or a public need? I don't know how much of this can be left to the discretion of the enforcement authorities, the disciplinary authorities in the department. That may or not be related to this. They showed pictures of what you may or may not have. You indicated there's a technical violation if somebody's hair goes over the ears. I think that that was a very strict interpretation of the regulations. I think that if the hair could reasonably be groomed to conform to the regulations, that would be enough. I don't think it has to conform during sleeping hours or those temporary moments when the grooming is upset. If the hair is so cut that it can conform to me, that would be a reasonable interpretation and that's it. The mere fact it falls over the ears would not be a violation. I'd be ready to entertain a writ of mandamus if anybody discharged anybody for the moment the hair fell over or even that way for an hour or even that way for ten hours or eight hours while he slept. You may continue. I may suggest if anyone is ready to make any kind of a survey, if you think it's relevant, and it's not too expensive, if you want to do some research and find whether community reaction or evidence of taste is available.

Mr. Wexler: I'll defer to them since they have the burden of proof. You probably have the money, though.

Your Honor, I want to bring up the point concerning the agreement, the alleged agreement between the president of the PBA and the police commissioner.

Q. Police Commissioner—

The Court: Incidentally, I don't think that because the commissioner came to agreement with the PBA that that means that everyone is bound by it, and it meets constitutional standards.

Mr. Wexler: I wanted to point out—

The Court: You can go into it.

Q. This is an agreement for a period of six months; isn't that correct? A. Initially, yes, sir.

Q. There came a time when your department issued two [photographs] paragraphs showing what the hair regulation would be; is that correct? A. Yes, sir.

Q. And it wasn't that which was offered in Exhibit C, but another photograph? A. That's correct, sir.

Q. Which was really not in compliance or following the regulation that you and the president temporarily agreed to? A. That's correct.

Q. When that picture was shown around to the members of the department, there was a reaction to that, wasn't there? A. I understand there was, sir, yes.

Q. The membership said they could not go along with it anymore; is that correct? A. (No response.)

Q. Anyway, you were advised? A. I don't know what the membership said, sir.

Q. You were advised the six-month trial period had

fallen apart because of the picture sent out by the police commissioner's office? A. No, sir, I was not told that.

Q. But you were told the agreement is off; isn't that correct? A. No, I wasn't. What I was told was that the PBA had voted to continue the suit. That's what I was told.

Q. That they were not—within the six-month period, they have not agreed to go along with the temporary agreement? A. That's correct.

Q. It was the understanding that the originate of the agreement would be a trial period for six months and each party can declare it null and void and continue with the lawsuit if they want? A. That's my understanding.

Q. So there was no final agreement—one other thing, police commissioner, men walking the streets and patroling have to wear their hats, don't they? A. Yes, sir.

Q. When hats are on securely, hair cannot blow in the eyes? A. I would say that's correct, sir.

Q. When you refer to the example that you can pull someone's beard in pulling him down, can't you pull a tie just as readily in pulling him down? A. That's true.

Q. You can pull any portion of clothing just as readily? A. Well, I wouldn't say any portion of the clothing, but portions of the clothing could be grabbed, yes, sir.

Mr. Wexler: No further questions.

Redirect Examination by Mr. Sweeney:

Q. Commissioner, could you just briefly state why the regulation affects those some odd 250 detectives who have been requested or have a special assignment allowing them to have longer hair? A. Why the rule applies to them?

Q. Yes. A. These are our general service qualified detectives who meet and deal with the public daily. They are people that, detectives that meet people who come in to complain their house was burglarized. They have a more public oriented type of job where the other men are doing undercover type assignments.

Q. Is a detective a different rank from a patrolman for example? A. Civil service wise, a detective is a patrolman, but he is a patrolman detailed at the discretion of the police commissioner.

Q. At the discretion of the commissioner, could the detective be told to be in uniform? A. Would take even less than that.

Q. Is he required to keep a uniform? A. Yes, he is.

Q. There's one issued to him? A. Yes.

Q. That's all of those 250 or all detectives? A. Yes, sir.

Q. Looking at these two officers, would you say in your opinion as the police commissioner, that they would be subject to discipline as a result of their hair length that you see today? A. Probably not.

Q. Would you say their hair length are in substantial conformity with the regulation? A. Substantially, yes.

Recross Examination by Mr. Wexler:

Q. Their hair length is in substantial conformity with the order? A. With the exception of the hair over the ears.

Q. We're talking about hair over the ear. A. What do you mean by "substantial"?

Q. All right, are they in violation, considering their length of hair and their ears? A. Technically speaking, yes.

Q. Could a superior officer charge them with a violation of the rules and regulations and be placed on trial in disciplinary proceedings? A. Yes, they could.

Q. Even though they're not a safety hazard or any other hazard as far as you're concerned? A. That's correct.

Q. Just because the commissioner doesn't like the way they style their hair? A. No, sir. Because the commissioner has got to have a limit. The supervisor has got to know how low that hair can go. You cannot have a regulation that patrolmen shall be neat and let it stop there. If you find that a patrolman that everybody agrees would be unneat and you charged him, I doubt the constitutionality of any disciplinary action. A patrolman must have standards that he must know he has to conform to before he can be guilty of any regulation.

The Court: Is any disciplinary proceeding pending against either of these two patrolmen?

The Witness: As of right now, no disciplinary proceeding pending against any patrolman on hair regulation.

Q. On the hair regulation because of this temporary agreement we've had on seeing if we can work it out? A. Not necessarily, sir. I didn't tell the supervisors they could not enforce that regulation.

Q. Didn't you tell the supervisors to "Go soft on hair, we're trying to work it out. Let's not shake the boat"? A. Not in those words.

Q. Not in those words, but words and substance, the same saying, "Don't rock the boat while we're trying to work something out." Withdrawn.

Didn't we have hair disciplinary actions in the past before the agreement? A. Yes, sir.

The Court: When was the agreement terminated?

The Witness: As far as the Suffolk County Police Department, sir, it has not terminated. That's the regulation still in force and effect.

The Court: I'm talking about the understanding that you would not institute disciplinary actions for violations.

The Witness: That was never my agreement, sir. I never agreed not to institute disciplinary actions against a patrolman in violation of the new November regulations. I never agreed to that.

The Court: None were instituted since November?

The Witness: That's correct, sir.

Q. We have many hair disciplinary cases before, didn't we? A. Prior to July, Mr. Wexler, I couldn't comment. I don't know how many you did have.

Q. You know of one case where a police officer quit the job because he was in violation and refused to conform? A. Yes, I do.

Mr. Wexler: Nothing further.

The Court: Anything further.

Mr. Sweeney: No.

The Court: You may step down. Thank you.

(Witness excused.)

Mr. Wexler: I'm not going to call any witnesses.

The Court: You rest on this?

Mr. Wexler: I'll rest on the testimony. I think the Court knows the issue better than I do.

The Court: Do you have any reported cases of similar regulations upheld?

Mr. Sweeney: Yes, I do, your Honor. I have a case which I would rely on heavily because it concerned the Nassau County PBA, and exact regulation to the old regulation in this case.

The Court: Do you have a brief?

Mr. Sweeney: I have a copy. The brief I submitted in the Circuit Court of Appeals.

Mr. Wexler: That was before the Circuit Court of Appeals he's relying on.

The Court: Does that recite the case in question?

Mr. Sweeney: Greenwald against Frank.

The Court: You say that's a Nassau County case?

Mr. Sweeney: Yes. The lower Court decision was 70 Miscellaneous Section 632, 334, New York Sub-Section 680, affirmed as modified, Appellate Division 337, New York Sub-Section 225, and that case was affirmed on June 1, 1973, by the Court of Appeals of the State of New York, affirmed unanimously, no opinion. I don't have the Court of Appeals' citation. That was the case held.

The Court: Was that discussed in the Court of Appeals?

Mr. Sweeney: Certainly was, your Honor.

The Court: I have a slim opinion. Where did the Court of Appeals referred—I see it. Who decided that case in Nassau County?

Mr. Sweeney: Justice Bernard F. McCaffrey. He wrote an opinion. I was going to quote from that, but if your Honor is going to read it, there's no necessity.

The Court: That came out of the Supreme Court, Nassau County?

Mr. Sweeney: That's correct. It's the exact same situation. It's the PBA suing—identical to this case. If I just may read the Appellate Division's opinion? May I your Honor?

The Court: Surely. "The rational of the modest regulation in question concerning personal appearance setting forth rules as to haircuts, sideburns, mustaches and beards is that there should be neatness and discipline in a large quasi military organization such as the Nassau County Police Department so that the general public will have

respect for the members of the department. In our opinion, this regulation does not raise issues which rise to the dignity of constitutional questions."

I would submit to the Court that the Circuit Court of Appeals while saying, "We make no view on the merits," is merely saying that there are situations where perhaps the regulation of hair would raise a constitutional question. I think that's the sum and substance of their sending it back and saying, "Have a hearing on it, or at least a trial as to what are the reasons because we don't have enough reasons before us."

There was a case before the Supreme Court involving the regulation of hair in public schools. That case was Karr against Schmidt, 401-US-1201. Justice Black, writing in that case, says the impression given the Courts today about the length of hair. I quote on page—this is from the Supreme Court, any one Supreme Court, page 593. "The hair issue has created or is about to create a national crisis. I confess my inability to understand how anyone who does classify this hair length case. The only thing about it that borders on the serious to me is the idea that anyone should think that the Federal Constitution imposes on the United States' Courts the burden of supervising the length of hair that public school students should wear." This case does not involve public school students. I think that's a civilian category. There are many cases on it, but just as analogy, is this Court—are we to be back here in six months from now? In other words, if this regulation is not rational or it has no rational basis, there are two issues. Number one, can the police commissioner regulate hair length at all as part and parcel of neatness, appearance, safety, the fact of maintaining some discipline in a police department? Sure there's going to be exceptions. There's bound to be. I suppose that's why they have hearings. If somebody was—a charge leveled against them, perhaps even in this case, perhaps

hair a little over the ear, maybe that isn't unreasonable or maybe when it's before one of the powers of the deputy commissioner, to sit and hear cases to say, "That isn't what the regulation is all about. When we go to". When we go to Court to test the statute, they say that's not the intent. The intent of his regulation is to have some kind of conformity in appearance, a general conformity. You can knit-pick at this regulation. As a matter of fact, I'm sure if next week the Suffolk County Police Department says we're going to issue everybody white socks, well, I'm sure the law enforcement will probably still be the same. The question is, as your Honor has pointed out, that about the fellow who comes in unshaven or the hair all over the place. It's to keep some kind of a general rule. There's going to always be an exception. At issue here is just the right of the commissioner to regulate.

The Court: We're almost on a collision course with the possibility of a challenge to vagueness. Even a statute that says, the regulation that says, "neat," what does that mean? Its a variable standard. I am trying to think of instances where, instances in my life or your life for a long period of time you've seen someone—he never looked neat. He can go out and buy a $300.00 suit, come out of the barber, have just taken a bath, have the newest clothes and still, for some reason, to you, look dirty. These individual tests are difficult to regulate. Can the commissioner promulgate rules that are so vague as to put officers in jeopardy of their jobs by failure to adhere to a vague regulation? This at least makes an attempt to specify and in making an attempt to specify, leaves open the possibility of objection, as I say, close cases. Neat and still in violation. Safe, but still in violation. That's the problem.

Mr. Sweeney: Perhaps, your Honor, in time—just as the regulation has been amended now, it may be amended

again. It's perhaps just as they delete it, I think one of the problems with regard to mustaches was whether they went below the lip. Before that regulation I suppose this officer (Indicating) would have been in violation. Now that part has been modified so he's certainly not in violation. I think it's at least a good faith attempt on the commissioner to have some kind of regulation, some reasonable regulation. There are some people, I suppose, who can wear mustaches like that that look terrible, also that do not trim them, that do not look neat.

The Court: As I recall it, Holmes' mustaches was over his lip. They used to call it soup strainers. Because it was Mr. Justice Holmes, I suppose he looked dignified or Mr. Chips in the movies had one that came over his lip. That's why I say its difficult to fix standards for these personal appearance requirements.

Mr. Sweeney: Well, in summary, I would like to say that it is our position—I think the sum and substance of the complaint had been that the regulation as it stood then was unreasonable rather than saying there should be no regulation at all.

The Court: Haven't these regulations been tested any place else in the country since this Court of Appeals' decision came out?

Mr. Sweeney: Not to my knowledge, your Honor. In fact, I have many calls in my office saying what is happening in this case because—

The Court: I had a few calls, one from Justice Meyer because he had a firemen's case out there and wanted a copy of my opinion. This was before the Court of Appeals reversed. I don't know what he did with that.

Mr. Sweeney: That went to the Court of Appeals. That was firemén. It was a different regulation. It's a different category, entirely. The Court sent it back here to show some public need. Commissioner has testified to

safety, to neatness that the public expects some kind of visible sign of law enforcement to have a proper appearance. There's been testimony that it's part of the uniform, just as much as the fact that the uniform may be blue and there's a badge, revolver, et cetera, and lastly, that it does maintain some kind of border within a police force.

The legitimate state interest the Circuit Court mentions, the enforcement of the laws of the State of New York, is certainly a legitimate state interest. The regulation itself, it's not so tight. If somebody violates a regulation, it's like anything else, there's a charge leveled and there are hearing procedures. It's not cut and dry "You're off the force," or anything to that effect at all. I find myself hard pressed as your Honor did, to argue the case where a patrolman is assigned outside as a detective. Now he is not in that uniform and he is supposed to look like a civilian. He's supposed to blend in with the community, so to speak. Whether or not how long his hair could be? The only thing I have to say to that he is always subject to the discretion of the commissioner. He is required to have a uniform and if that is there, then there has to be some regulation there also, although I have to admit my argument is certainly not as strong with the uniform patrolman. It's my position the regulation should stand so that the Suffolk County Police Department can present itself uniformly, representing a quasi military force with dignity, well identified and recognizable to the public being served.

The Court: Would you like to submit anything further or are you resting on what you are saying?

Mr. Sweeney: As to the law, Greenwald against Frank is certainly as specific as it's ever going to get. I think probably the most predominant case in the country. It's a Court of Appeals' decision. There is no decision on the merits at this time. The Circuit Court while they said

many things are saying it by way of dicta, perhaps by way of guidelines to say, "Take it seriously when it goes back." Other than that, I would state Greenwald against Frank as precedent for your Honor upholding the regulation as being a modest regulation, as being reasonable and being something within the police commissioner's powers. Thank you.

The Court : Mr. Wexler, are you aware of any decision on preparing regulations, fire or police?

Mr. Wexler: Long Island Conductors. Same hair regulation, same argument as safety.

The Court: Some clerk thought I should have it as a related case, under our rules of individual assignment, if a case is related, it goes to the Judge who had the previous case, but I didn't think it was related and I directed it go into the wheel and I think Judge Constantino had that one.

Frankly, the same problems, in my humble opinion and I made that determination as a Chief Judge and not as a District Judge. It just occurred to me that there is a different kind of need for regulation in the police department or even the fire department as there is in the Long Island Railroad. Frankly, I can see little reason for the Long Island Railroad.

Mr. Wexler: They claimed the very same thing. At the beginning when you said—I didn't know they were coming in on safety or cleanliness or discipline as they did in all three in the conductors' case.

The Court: How many attackers—conductors as policemen? Policemen's job is dealing with the public a good part of the time. The conductor meets the general public, people going to business, shopping, coming and going back. They have obstreperous individuals once in a while. The need is less there than in the police department. Are you aware of Justice Meyer's case in Nassau County? I never got a copy of his opinion. I don't think he followed mine.

Mr. Wexler: He distinguished it because they were vol-

untary firemen involved, used that as the distinguishing factor.

The Court: Were these only voluntary?

Mr. Wexler: Only voluntary. That distinguished it from the other.

I would like to be heard briefly, your Honor. I realize my friend—

The Court: Excuse me, were you in the Greenwald case?

Mr. Wexler: No.

The Court: Do you know the lawyers who were?

Mr. Wexler: I know the lawyers who were.

I know the Greenwald case and I know it was referred to in my friend's brief and he argued it before the Circuit Court of Appeals. They answered the issue specifically and they refer to the case and they do distinguish it on the two points. Number one, the police are no longer a quasi military. It's a constitutional issue.

The Court: I thought they came to a different conclusion, that's all.

Mr. Wexler: They came to a different conclusion in the Greenwald case. I agree. I think this Court understands the issue. I don't intend to—I planned to use the hackneyed thing, Christ, Mohammed, Confucius would be in violation, Grant, Lincoln and so forth. You know—

The Court: I don't think they would make the police force.

Mr. Wexler: The hair regulation. The more significant thing, I'm a great believer in law. Somehow when the law doesn't fit it, it means a law shouldn't be there. The law doesn't fit in here. We can't work—I have to agree with them—they're trying to draw lines. I'm trying to knock the lines down. In afield of this, it just doesn't fit even though they have the burden of preving this case, of course, they can't prove it. It's like the obscenity cases. They'll go on and on until we let it seek its own level. It will. It's just a matter of time. They say the police department is

acting in good faith. I have to disagree. We had to bring them to Court. We had to come back again to get changes. There wouldn't have been changes. Leave it alone. It will seek its own level. I think I can say that based upon law we know, when things don't work legally, something is wrong. The law shouldn't apply and leave it alone. Thank you, your Honor.

The Court: I'm disturbed by one phase of the case. That's the proof as to whether the police department loses its effectiveness because of the length of hair and, of course,—

Mr. Sweeney: With regard to the public surveys.

The Court: That's right, Commissioner Rapp just said that some members of the department have indicated that they object to it. They don't like it. They don't think it's right and some individual members of the public feel that way. Well, it's easy to get support for both sides. He didn't express an opinion as to how the general public felt and the real testimony is the description of the hazards that place policemen in jeopardy by reason of long hair, long beards. Did you intend ordering a copy of these minutes?

Mr. Sweeney: Not at this time.

The Court: I have to make findings. I find it difficult.

Mr. Sweeney: In that case, I'll order a copy.

Mr. Wexler: We'll submit it to the Court, your Honor.

The Court: I don't think there's any need for expediting or giving me a daily on this. It usually takes a week or ten days. If you're not in a hurry? Then that would be good enough.

Mr. Sweeney: The Court is increased substantially.

The Court: Decision reserved. If anything happens between now and the time I file my findings and write my decision, that you become aware of, I appreciate your advising me of it. I'll read all the opinions in Greenwald against Frank.

Exhibit A—New Regulations of the Suffolk County Police Department.

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N. Y.

PDCS-2008

☐ SPECIAL ☐ PERSONNEL ☒ GENERAL

DATE: 26 Nov., 1973 AUTHORITY: Police Commissioner

SIGNATURE: Eugene R. Kelley

DISTRIBUTION: ☐ ALL MEMBERS ☐ ALL COMMANDS ☐ COMMANDS CONCERNED ☐ TELETYPE

Effective 15 November, 1975, 2/2.16 of the Rules and Procedures are amended as follows:

A. Hair will be neat, clean, trimmed and present a groomed appearance. Hair will not go below the ears or the collar except the closely cut hair on the back of the neck. Pony tails are prohibited. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

B. If a member chooses to wear sideburns, they will be neatly trimmed. Sideburns will not extend below the lowest part of the ear. Sideburns shall not be flared beyond 2″ in width and will end with a clean-shaven horizontal line. Sideburns shall not connect with the mustache.

C. A neatly trimmed mustache may be worn.

These new regulations are promulgated in an effort to permit members of the Department to conform to the change in men's hairstyle. However, these regulations are experimental and will be revoked if abused. It is expected that all members shall be neat in appearance and conform to the highest standards of the Suffolk County Police Department.

Notice of Appeal Dated December 6, 1971.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THOMAS DWEN, as President of the Suffolk County Patrolman's Benevolent Association and THOMAS DWEN, Individually,

Plaintiff,

against

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

NOTICE IS HEREBY GIVEN that THOMAS DWEN, as President of the Suffolk County Patrolman's Benevolent Association, and THOMAS DWEN, Individually, Plaintiff above named, appeals to the Court of Appeals for the Second Circuit from a Memorandum of Decision and Order of the HON. JACOB MISHLER dated November 8, 1971, said Order denying Plaintiff's request for a preliminary injunction, as well as a Memorandum of Decision and Order of the HON. JACOB MISHLER dated November 30, 1971 dismissing the Complaint herein.

Dated: December 6, 1971

MEYER & WEXLER, Esqs.
Attorneys for the Appellant

BY s/ Richard T. Haefeli
RICHARD T. HAEFELI
28 Manor Road
Smithtown, New York 11787
(516) 265-4500

To: The Hon. GEORGE W. PERCY, JR.
Attorney for the Defendant
County Attorney, Suffolk County
County Center
Riverhead, New York 11901

Affidavit of Eugene R. Kelley Sworn to November 16, 1971.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF SUFFOLK } ss.:

EUGENE R. KELLEY, being duly sworn, deposes and says:

1. That he is the duly appointed Deputy Commissioner of the Suffolk County Police Department and submits this affidavit in behalf of the Police Commissioner of Suffolk County (the defendant herein), who is out of the County and unavailable.

2. That he has read the decision of the Hon. Jacob Mischler, United States District Judge dated November 8, 1971 concerning this case and has been informed of the contents of the brief submitted on behalf of plaintiffs herein.

3. For the information of the Court, your deponent has set out in the following paragraphs the rationale of the Police Commissioner's General Order #71-1 (Grooming Standards) as it relates to Plainclothesmen and Detectives.

4. The permanent civil service rank of every sworn member of this department who serves as a plainclothesman or detective, is that of a Patrolman in the Suffolk County Police Department.

5. Detectives are assigned to such positions solely at the discretion of the Police Commissioner and can be returned to uniformed duty at any time. They serve in the Detective Division and they number about 450.

6. Plainclothesmen are patrolmen who have been designated to perform certain duties in civilian clothes. They serve in the Patrol Force, the same division to which all uniformed personnel are assigned. They are designated plainclothesmen by the Precinct Commanders with the approval of the Police Commissioner. There are presently 52 plainclothesmen in this department.

7. Every detective and every plainclothesman in this department has been, and is presently subject to the same set of rules, both as to discipline and grooming. We live in a volatile society where trouble can erupt in any setting. Schools, labor establishments and prisons have all been settings for disorder. This department has mobilization procedures which range from assembling a few patrolmen to full mobilization of the entire department (i.e. —Everyone reports to his station "in uniform" for the emergency, detectives included). This department was fully mobilized for the Stony Brook University riot in May 1969, and Carleton Park disorders in the summer of 1970. Such disorders can occur at any time.

8. Detectives and plainclothesmen have been ordered into uniform on many occasions in the past for such things as industrial disputes, National Security details, riot control, assignments involving V.I.P.s, Parade, Funeral and Escort details. Frequently, time is so short, there is no time to get to the Barber Shop and hence my belief, detectives and plainclothesmen should fall under the same grooming standards as the uniformed force.

Affidavit of Eugene R. Kelley Sworn to November 16, 1971.

9. In addition, detectives and plainclothesmen frequently are on the lecture circuit, speaking at schools, luncheons, etc. Since they appear as members of this department and, in fact, represent the department itself, they should be subject to the same regulations as the uniformed force.

10. The Rules and Procedures of this department require every detective and plainclothesman to maintain a full set of uniforms ready for instant use, and provide for uniform inspection twice a year.

11. The President Judge of the Suffolk County District Court has recently requested your deponent to have all policemen to testify in that court appear neatly dressed and groomed despite the fact they may be detectives, etc. This for the reason that juries apparently find neatly dressed and neatly groomed policemen more credible than those who are not so neatly dressed or groomed.

12. This Court is also asked to consider the possible damage to morale of this department were it to attempt to administer and apply a "double standard" as to grooming of members of the force, one for the uniformed division and one for the detective division. The Court, by its decision dated November 8, 1971, has apparently ruled that General Order 71-1 violates no Constitutional principles as it relates to uniformed policemen. Thus, the overwhelming majority of this department falls within the ambit of the Court's decision. This Court is asked not to make an exception for detectives and plainclothesmen who comprise only about 20% of the total force, but whose members presently enjoy almost 100% of those exemptions already granted by the Commissioner to the provisions of General Order #71-1.

Memorandum of Decision and Order Dated November 8, 1971.

13. Finally, this Court is assured that exemptions will be (and have been) made to General Order 71-1 to fit the exigencies and demands of this department and for surgical, medical or cosmetic reasons involving individual members of the force.

s/ Eugene R. Kelley
Deputy Commissioner

[Duly Sworn to November 16, 1971.]

Memorandum of Decision and Order Dated November 8, 1971.

UNITED STATES DISTRICT COURT
Eastern District of New York

[SAME TITLE]

Plaintiff, a patrolman employed by the Suffolk County Police Department and president of Suffolk County Patrolmen's Benevolent Association, seeks a preliminary injunction enjoining enforcement of general order number 71-1, which order amends Chapter 2 of the Rules and Procedures of the Suffolk County Police Department, which became effective August 1, 1971. The order sets grooming standards for members of the Suffolk County Police Department.[1] Under the order, beards and goatees are forbidden; sideburns may "not extend below the low-

[1] Order set out in appendix.

est part of the exterior ear opening"; and mustaches must be short and neatly trimmed. The affidavit in support of the application states that community standards are less restrictive and that compliance with the order will, in effect, set him apart from the community in violation of his constitutional rights. The claim sets forth First and Fourteenth Amendment violations in that the order deprives plaintiff of his right of free expression, due process and equal protection of law.

Uniformity of dress is part of the discipline of the local police department. It is the visible sign of the presence of the law. How the police officer appears to the public is one factor in effective law enforcement. Regulations involving dress and grooming are better left to the officials who are aware of the local customs and taboos. It would be inappropriate for the court to frame such regulations, absent a clear showing of a violation of a constitutional right.

Circuit (now Chief) Judge Friendly in *Negron* v. *Wallace,* 436 F.2d 1139, 1141 (2d Cir. 1971), discussing a claim brought in the federal court under 42 U.S.C. § 1983, said, "Suits under that statute should not be lightly brought." He suggested that such claims be resolved ". . . by calm discussions with the state officials in the absence of any litigation whatsoever."

Turning to the merits of the application, authority for defendant's position is found in decisions reviewing army regulations concerning grooming. *Doyle* v. *Koelbe,* 434 F.2d 1014 (5th Cir. 1970). Plaintiff would distinguish those cases from the instant case on the ground that the New York Criminal Procedure Law includes in the definition of police officer certain members of the New York City Fire Department and investigators on the staff of county district attorneys.

The intent of the regulation is that it apply to uniformed police officers. This is evident from the list of exemptions submitted to the court by defendant as of August 18, 1971.[2] Application of the regulation to members not in uniform might very well bring the regulation within the prohibitions of the Constitution. *See Griswold* v. *Connecticut,* 381 U.S. 479, 85 S.Ct. 1678 (1965).

Nor is the attempt by the plaintiff to distinguish police from the military for the purposes of the regulation persuasive. The courts have held that members of the armed forces do not have their full constitutional rights while serving in the service. *Raderman* v. *Kaine,* 411 F.2d 1102 (2d Cir. 1969). In *Raderman,* the court indicated that it did not intervene in the matter involving a directive revoking one permitting long hair because ". . . there is clearly no action by the military which goes far beyond any rational exercise of discretion."

The plaintiff further distinguishes the duties of the police from that of the military in pointing out that the police officer has duty and non-duty hours. The court, assuming this questioned state, would nevertheless find a closer fact pattern in the case of a member of the National Guard.

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[2] Those exempted to August 18, 1971:

4 Detectives—Intelligent Squad, Undercover assignment, must frequently associate with persons and in circles where extreme hair styling is prevelant.

48 Detectives—Narcotics Squad.
Undercover assignment as above.

4 Detectives—Special Investigations Squad. (Gambling, Vice, etc.)
Undercover assignment as above.

1 Detective —Robbery Squad.
Special assignment to infiltrate members of gang.

Memorandum of Decision and Order Dated November 8, 1971.

In *Gianatasio* v. *Whyte*, 426 F.2d 908 (2d Cir. 1970), the plaintiff enlisted in the National Guard. Plaintiff was the manager of a shoe bazaar in Westport, Connecticut and claimed that his long hair helped him in his job and that it was essential to his civilian work. Because of his refusal to cut his hair as required by Army regulations, he was ordered to report for active duty. The court dismissed the attack on the validity of the regulation with the observation that the military has wide discretion in regulating hair length. *Gianatasio* v. *Whyte*, supra, at p. 911.

Motion for a preliminary injunction is denied, and it is

So Ordered.

The court believes the claim is insufficient as a matter of law. It is however reluctant to dismiss the complaint without affording plaintiff an opportunity to argue the point. The court sets the matter down for argument on November 19th, 1971 at 10:00 A.M. All briefs to be submitted by November 15th, 1971.

Jacob Mishler
U. S. D. J.

Order Number 71-1 Amending Rules and Procedures

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.

☒ General
☐ Special
☐ Personnel Order Number 71-1 Date 19 July, 1971
Authority Police Commissioner
Signature of Authority John L. Barry

Effective 0001 hrs. 1 August, 1971 Chapter 2 of the Rules & Procedures is amended by the addition of the following section:

2/75.0 Members of the Force and Department shall be neat and clear at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by the Police Commissioner due to special assignment:

2/75.1 Hair: Hair shall be neat, clean, trimmed, and present a groomed appearance. Hair will not touch the ears or the collar except the closely cut hair on the back of the neck. Hair in front will be groomed so that it does not fall below the band of properly worn headgear. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear. The acceptability of a member's hair style will be based upon the criteria in this paragraph and not upon the style in which he chooses to wear his hair.

2/75.2 Sideburns: If an individual chooses to wear sideburns, they will be neatly trimmed and tapered in the same manner as his haircut. Sideburns will not extend below the lowest

part of the exterior ear opening, will be of even width (not flared), and will end with a clean-shaven horizontal line.

2/75.3 MUSTACHES: A short and neatly trimmed mustache may be worn, but shall not extend over the top of the upper lip or beyond the corners of the mouth.

2/75.4 BEARDS & GOATEES: The face will be clean-shaven other than the wearing of the acceptable mustache or sideburns. Beards and goatees are prohibited, except that a Police Surgeon may grant a waiver for the wearing of a beard for medical reasons with the approval of the Police Commissioner. When a Surgeon prescribes that a member not shave, the beard will be kept trimmed symmetrically and all beard hairs will be kept trimmed so that they do not protrude more than one-half inch from the skin surface of the face.

2/75.5 WIGS: Wigs or hair pieces will not be worn on duty in uniform except for cosmetic reasons to cover natural baldness or physical disfiguration. If under these conditions, a wig or hair piece is worn, it will conform to department standards.

Answer.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant answering the complaint herein by George W. Percy, Jr., County Attorney of Suffolk County, respectfully alleges:

FIRST: Denies the allegations contained in paragraphs of the complaint numbered 1, 5 and 6.

WHEREFORE, defendant respectfully requests that the complaint be dismissed together with such other and further relief as to the court may seem just and proper.

s/ GEORGE W. PERCY, JR.
George W. Percy, Jr.
County Attorney, Suffolk County
Attorney for Defendant
Suffolk County Center
Riverhead, New York 11901
(516) 727-4700

Summons.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to serve upon Leonard D. Wexler, Esq., plaintiff's attorney, whose address is 22 Manor Road, Smithtown, New York, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

s/ LEWIS ORBEL
Clerk of the Court

By s/ JAMES R. ABRAM
Deputy Clerk

Dated: Aug. 4, 1971.

Complaint.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

I. Jurisdiction.

1. The jurisdiction of this Court is founded upon the existence of a federal question.

This action arises under the First and Fourteenth Amendments to the Constitution of the United States. This is an action for a declaratory judgment and a permanent injunction to prevent the further deprivation of the plaintiff's constitutional rights of free expression, due process and equal protection as provided for in the First and Fourteenth Amendments to the Constitution of the United States.

II. Parties

2. The plaintiff, Thomas Dwen is President of the Suffolk County Patrolmen's Benevolent Association as well as an individual patrolman of the Suffolk County Police Department who resides in the County of Suffolk, State of New York.

3. The defendant, John L. Barry is the Commissioner of the Suffolk County Police Department, a State agency charged with the responsibility of maintaining public peace and welfare and John L. Barry is an employee and Chief Administrator of said police department.

III. Incidents at Issue.

4. On July 19, 1971, the defendant, John L. Barry in his capacity as Commissioner of the Suffolk County Police Department issued general order number 71-1 of the Suffolk County Police Department; said order amending Chapter 2 of the Rules & Procedures of the Suffolk County Police Department and became effective as of 12:00 midnight on August 1, 1971.

That said general order amended the aforementioned rules and regulations regarding the length of hair and sideburns, as the wearing of beards and mustaches by members of the Suffolk County Police Department. (Annexed hereto and made a part hereof and marked Exhibit A is a true and exact copy of said general order.)

IV. Cause of Action.

5. That the aforementioned amendment of the Rules & Procedures regarding the personal grooming of individual patrolmen is in violation of the plaintiff's constitutional rights of free expression, due process and equal protection as provided for in the First and Fourteenth Amendments to the Constitution of the United States, in that said rules and regulations are not based upon the generally accepted standard of grooming in the community and that it places an undue restriction upon the plaintiff in his activities in the community.

6. Plaintiff is now suffering and will continue to suffer irreparable injury as a result of the aforementioned restriction imposed by the defendant. Plaintiff has no plain, adequate or complete remedy at law to redress these violations of his constitutional rights, and this suit for

permanent injunction and declaratory judgment is his only means of securing complete and adequate relief.

Wherefore, plaintiff prays that this Court:

(a) Declare that the aforementioned amendment of the rules and regulations are illegal and in violation of the plaintiff's constitutional rights.

(b) Declare that the plaintiff be permitted to adapt a mode of personal grooming which conforms to the generally accepted standard of the community.

(c) Grant the plaintiff a permanent injunction, ordering the defendant, his agents, servants and/or employees and all persons in active concert with him from enforcing Chapter 2 of the Rules & Procedures of the Suffolk County Police Department as amended by general order number 71-1 of the Suffolk County Police Department.

(d) Grant the plaintiff nominal compensation and punitive damages in the amount of One ($1.00) Dollar.

(e) Grant such other and further relief as to this Court seems just and proper.

Respectfully submitted,

Leonard D. Wexler
Attorney for Plaintiff
Office & P. O. Address
28 Manor Road
Smithtown, New York
(516) 265-4500

Order to Show Cause Dated August 4, 1971.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon reading and filing the summons and complaint and the annexed affidavits of Thomas Dwen, duly sworn to the 3rd day of August, 1971, and Leonard D. Wexler, Esq., duly sworn to on the 3rd day of August, 1971, and the exhibits attached hereto, it is

ORDERED, that John L. Barry, Commissioner of the Suffolk County Police Department show cause at a Motion Term part of this Court to be held in Court Room #5, United States Court House, 225 Cadmen Plaza East, Brooklyn, New York, on the 10th day of August, 1971, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be made pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining John L. Barry, Commissioner of the Suffolk County Police Department, from enforcing General Order #71-1 of the Suffolk County Police Department dated the 19th day of July, 1971, said order amending Chapter 2 of the Rules and Procedures of the Suffolk County Police Department, and it is further

ORDERED, that service of a copy of this Order, the papers upon which it is based and the summons and complaint shall be made personally upon said John L. Barry, Commissioner of the Suffolk County Police Department on or

before the 5th day of August, 1971, at or before 2:00 P.M. o'clock and that said service shall be deemed sufficient.

s/ JACOB MISHLER
United States District Judge

Service by Richard A. Haefeli a person over the age of 21 years old not a party to the litigation is authorized to serve process.

s/ JACOB MISHLER
U.S.D.J.

Affidavit of Thomas Dwen Dated August 3, 1971.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss.:

THOMAS DWEN, being duly sworn, deposes and says:

That your deponent is the plaintiff in the above entitled action, and as such is fully familiar with all of the facts and circumstances as hereinafter set forth.

That your deponent, as President of the Suffolk County Patrolmen's Benevolent Association as well as an individual patrolman of the Suffolk County Police Department, submits this affidavit in support of the within application requesting an Order enjoining John L. Barry, Commissioner of the Suffolk County Police Department from enforcing Chapter 2 of the Rules and Procedures of the Suffolk County Police Department as amended by General Order #71-1 of the Suffolk County Police Department. (Annexed hereto, made a part hereof and marked Exhibit "A" is a true and exact copy of said General Order.)

That the Police Commissioner's attempt to regulate length of hair and sideburns as well as the wearing of mustaches beards is an infringement upon your deponent's constitutional rights of free expression, due process and equal protection as provided for in the First and Fourteenth Amendments to the United States Constitution.

That your deponent respectfully submits to this Court that for any Police Department's Rules and Procedures regarding personal grooming to be valid, they must be

based upon the generally accepted standard of grooming in the community in which said Police Department is located.

That in the instant case, the amended Rules and Procedures are not based upon such a standard, rather they are based upon the personal standard of the Police Commissioner.

That your deponent, as a member of the community, knows of his own knowledge that the amended Rules and Procedures are more restrictive than the generally accepted standard of the community.

That enforcement of the amended Rules and Procedures will prevent your deponent from establishing his identity in the community separate and apart from his identity as a patrolman, and that such a consequence would violate your deponent's constitutional rights.

Further, your deponent respectfully points out to this Court that enforcement of the amended Rules and Procedures based upon the personal standard of the Police Commissioner and not the generally accepted standard of the community will be in violation of your deponent's constitutional rights.

That your deponent, simultaneously with this motion, is instituting a civil action against the defendant for a declaratory judgment and permanent injunction. (Annexed hereto, made a part hereof and marked Exhibit "B" is a true and exact copy of said summons and complaint.)

WHEREFORE, your deponent respectfully requests that the within application be, in all respects, granted.

s/THOMAS DWEN
Thomas Dwen

[Duly sworn to
August 3, 1971].

Affidavit of Leonard D. Wexler Dated August 3, 1971.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF SUFFOLK } ss.:

LEONARD D. WEXLER, being duly sworn, deposes and says:

That your deponent is the attorney for the plaintiff herein and as such is fully familiar with all of the facts and circumstances as hereinafter set forth.

That your deponent respectfully submits to this Court that an order to show cause and restraining order are necessary in this case in view of the constitutional nature of the issue involved, and that the plaintiff's constitutional rights will be violated unless the relief requested is granted.

That your deponent respectfully submits to this Court that the granting of a restraining order pending a hearing for a preliminary injunction will in no way injure the defendant herein.

That your deponent respectfully submits to this Court that the plaintiff has no adequate remedy at law and in view of fact that the plaintiff is presently suffering irreparable injury as a result of the defendant's actions time is of the essence.

That no prior application for the relief sought herein has been requested in this or any other Court.

WHEREFORE, your deponent respectfully requests that the within application be, in all respects, granted.

Leonard D. Wexler

[Duly sworn to
August 3, 1971.]